IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL W.P.NO.444 OF 2004

Mr.Samir D.Sarvaiya ..Petitioner

Vs.

State of Maharashtra & Anrs...Respondents

...

Ms.Sonal for A.K.Bakshi Advocate for Petitioner
Mr.V.B.Konde-Deshmukh A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : OCTOBER 24, 2005

P.C.

1. Heard the learned advocate for the petitioner and the learned A.P.P. for the State.

2. The petitioner is seeking quashing of Complaint i.e. C.C.No. 185/S/1997 which is pending before the learned Metropolitan Magistrate, 37th Court at Esplanade, Mumbai. In the said case, process has been issued against the petitioner under Section 138 r.w. 141 of Negotiable Instruments Act. The learned advocate for the petitioner submitted that the learned Magistrate committed an error in

issuing process and the said process deserves to be set aside. It is further submitted that if the process issued against the petitioner is set aside, the proceedings in respect of the petitioner would come to an end.

3. For the reasons recorded in the decision of this Court in the case of **V.K.Jain and others Vs. Pratap V. Padode reported in 2005(3) Mh.L.J.778,** I am of the opinion that the petitioner has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the petitioner prefers a revision before the concerned Sessions Court against the order of the Magistrate issuing process.

4. Liberty is granted to the petitioner to prefer the necessary revision before the concerned Sessions Court. The learned advocate for the petitioner makes a statement that the necessary revision will be preferred within five weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of

five weeks from today.

5. On the necessary revision being preferred by the petitioner before the concerned Sessions Court, the concerned Sessions Court shall dispose of the matter on merits after hearing the necessary parties.

6. Writ Petition is disposed of.

[V.K.TAHILRAMANI,J.]